

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion to Assess and Revise
the Regulation of Telecommunications Utilities.

Rulemaking 05-04-005
(Filed April 7, 2005)

**SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER
AND ADMINISTRATIVE LAW JUDGE**

Summary

This ruling and scoping memo addresses the issues raised at the June 3, 2005 workshop, as well as those additional issues¹ about which parties requested clarification in their June 8th statements, sets forth the remaining schedule for this phase of the proceeding, and discusses a few procedural matters.

Clarification of Rulemaking's Scope

A number of the parties submitted questions seeking clarification of the Order Instituting Rulemaking's (OIR) scope. For several, answers to certain questions could determine whether, or at what level, they would participate in this phase. Nextel of California, Inc., Cox California Telecom (Cox), the California Association of Competitive Telecommunications Companies (CALTEL), XO, Pacific Bell Telephone Company, doing business as SBC

¹ This includes the items (issues) about which the Office of Ratepayer Advocates (ORA) and The Utility Reform Network (TURN) sought clarification in the May 13, 2005 Joint Motion to Set Aside the Schedule.

California, and Verizon California Inc. (Verizon), each asked whether the initial phase of the OIR included special access services. Special access services will not be considered in this phase. Special access services will be addressed in Phase II.

Cox submitted seven multipart questions for clarification. The first two questions focused on goals and definitions. The Commission considers the goals set forth in the OIR to be achievable. It is preferable to have the parties present within their proposals or reply comments their respective interpretations/definitions of “affordable,” “modern” and “high-quality” services rather than the Commission rigidly defining these terms. At least initially, the prospective uniform regulatory framework is expected to focus on “basic” services. How the parties’ proposals are presented and advocated will dictate the extent of pricing regulation, as well as its application.

Cox also inquires about how the intention of the OIR to require high quality service relates to exclusion of the issue of service quality in question 11 (G) (vii). While the details of the specific proceedings listed in question 11 (G) (vii) are outside the scope of the OIR, policy proposals on quality of service in the prospective uniform regulatory frameworks are within the scope of this proceeding, and will be entertained.

The OIR seeks proposals for a “technologically neutral” framework. Cox asks how “technological neutrality” squares with exclusive federal regulation of certain services. The Commission is keenly interested in this question, and the parties’ responses to it.

There is a possibility that there might not be formal hearings in Phase I.² Whether or not formal hearings are scheduled for Phase I depends on the

² This will depend on the parties’ interest, support, and justification.

showing that interested parties submit one week after reply comments are filed. At that time, parties should set forth any disputed material issues of fact, as well as any issues required to be addressed in evidentiary hearings pursuant to statutory law. Special access is an issue that will be reserved for Phase II. The Commission anticipates that if implementation issues arise, they will most likely be entertained during Phase I hearings,³ thus implementation issues in general will not be in Phase II.

In addition, there is a chance that non-respondent telecom companies will not be affected by this proceeding. One potential outcome is simply a change in the way the large and mid-sized incumbent local exchange carriers (ILECs) are regulated.

Pac-West and Level 3 asked for clarification that the OIR and the adopted Uniform Regulatory Framework is not intended to apply to the wholesale services of the respondent ILECs. They also sought confirmation that the “criteria and procedures” referred to in Phase 1 Issue 8 of Appendix A is intended to apply to the ILECs’ specified retail rates. The OIR and the adopted Uniform Regulatory Framework is not intended to apply to the wholesale services of the ILECs. The term “criteria and procedures” is intended to address retail rates. Any framework adopted in this proceeding will not have any effect on the existing interconnection obligations of the respondent ILECs with respect to the technical specifications, prices, or any other terms or conditions applicable thereto.

³ One self-implementation issue presented in a submitted proposal is the discontinuance of price floors.

TURN and ORA jointly submitted a number of issues/questions for clarification in their May 13, 2005 Motion to change the schedule as well as in their June 8, 2005 clarification submission.

The intent of the OIR in defining this process as creating a “uniform” framework is a regulatory framework that can be uniformly applied to the providers of this state who are also concurrently national providers. The Commission is interested in reviewing the parties’ discussions and definitions of the terms: “modern,” “affordable,” “high-quality,” and “technology neutral.” As stated above, to set forth specific definitions at this juncture could constrain the projected URF.

Regarding subsidies, if parties are inclined to propose that there be equal access to subsidies for all carriers, than such proposals for a uniform framework should include proposals to ensure that access to subsidies is uniform for all carriers. At this point, the Commission is entertaining changes to the definition of the term “basic local exchange services” set forth in the uniform regulatory framework proposals submitted by the parties.

The Commission is not addressing those issues originally slated for the Service Quality proceeding (R.02-12-004) in this rulemaking. However, if parties have specific points to make regarding service quality, they either should have included them in their framework proposals or should include them in their reply comments.

ORA and TURN have asked for a specification of “the type of price regulation assumed in (Appendix A, Issue 10) element A” and “whether the same type of price regulation would be applied to all basic exchange services.” Issue 10 offers one possible uniform framework and suggests a number of

potential elements. The OIR invited parties to expand upon the suggested elements or describe in detail any new elements.

ORA and TURN seek clarification as to whether the OIR is intended to exempt from regulation wholesale and carrier-to-carrier services such as UNEs and switched access. In fact, the OIR is not intended to address wholesale and carrier-to-carrier services such as UNEs and switched access. On the other hand, the OIR also is not intended to address public purpose programs, such as lifeline service.

ORA and TURN also ask for clarification with respect to either definition or intent of the Issue 10 elements of the projected uniform framework “UNE-L floor,” “current advice letter processes,” “promotional offerings,” “FCC resale rules,” “decoupling Yellow Page revenues from ILEC operations,” “new services,” “new technologies,” and “ARMIS reporting requirements.” These elements were offered as catalysts for parties’ own uniform framework proposals and analyses of others proposals.

ORA and TURN further ask how the adoption of a uniform regulatory framework would affect or impact the current NRF structure for the respondent ILECs, including the settlement reached regarding the SureWest NRF. Specifically, they inquire whether an adopted uniform framework would only supersede those elements of the existing NRF that are directly in conflict. Whether and/or how adoption of a uniform regulatory framework would be reconciled with NRF, and any settlements under NRF, are issues that the Commission would address in conjunction with its selection of a specific uniform framework proposal. At that point, parties will have had an opportunity to argue each side of the issue.

There is no discrepancy between the request for comments on the validity of existing monitoring and auditing requirements in Issue 9 and a determination that certain reporting issues in Issue 11 (G. ii and iii) are outside the scope of the OIR. The OIR is soliciting parties' policy positions in Issue 9, not pulling in the controversies in question in D.03-10-088, D.00-03-021 and D.02-10-020.

Finally, ORA and TURN ask how parties can address issues regarding service quality, the importance of affiliate transaction rules, and the need to ensure accurate reporting and audit information in a proposed uniform regulatory framework when the OIR excludes from the scope of this proceeding those same issues relating to the current regulatory framework. Parties can best address these and similar issues by either having included them as policy elements within their proposed uniform regulatory framework, or discussing their existence or absence in the reply comments.

Presiding Officer

This proceeding is quasi-legislative, and no party has contested the categorization. We are not presuming that there will be hearings, but parties will be given an opportunity to make a showing in support of them, after which time, a determination will be made. The following procedural schedules include alternative dates should hearings be necessary. Both schedules anticipate workshops convened by the assigned Administrative Law Judge and the Staff.

Procedural Schedule

Schedule I – If No Evidentiary Hearings

Reply Comments	August 12, 2005
Motions, if any, on the need for hearings	August 19, 2005
Replies to motions on need for hearings	August 26, 2005

Assigned Commissioner ruling on applicable law, need for and scope of hearings	September 16, 2005
Workshops	September 20-23, 2005
Opening briefs	October 20, 2005
Reply briefs	November 10, 2005
Draft decision	December 19, 2005
Final Commission decision	January 19, 2006

Schedule Ia – With Evidentiary Hearings

Reply Comments	August 12, 2005
Motions, if any, on the need for hearings	August 19, 2005
Replies to motions on need for hearings	August 26, 2005
Assigned Commissioner ruling on applicable law, need for and scope of hearings	September 16, 2005
Workshops	September 20-23, 2005
Concurrent Opening Testimony	October 19, 2005
Concurrent Reply Testimony	October 26, 2005
Hearings	November 7 -10, 14-15
Opening briefs	December 15, 2005
Reply briefs	December 29, 2005
Proposed decision	February 2, 2006
Final Commission decision	March 2, 2006

Finally, we note that we will set a schedule for Phase II at a later time.

IT IS SO RULED.

Dated August 4, 2005, at San Francisco, California.

/s/ SUSAN P. KENNEDY

Susan P. Kennedy
Assigned Commissioner

/s/ JACQUELINE A. REED

Jacqueline A. Reed
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail, to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge on all parties of record in this proceeding or their attorneys of record.

Dated August 4, 2005, at San Francisco, California.

/s/ KRIS KELLER for
Teresita C. Gallardo

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.